IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 703 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYSING PUNIYABHAI VASAVA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JM BUDDHBHATTI for the Appellant
MR KP RAVAL APP, for the Opponent

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 28/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. Present appeal arises out of a judgment and order rendered by Sessions Court, Surat, Camp at Vyara in Sessions Case No.242/96 on 25th June, 1999 convicting the appellant for offences punishable u/s 302 and 201 of I.P.C.

2. The facts of the case in a narrow compass can be stated thus:

2.1. Appellant Vijaysing Puniyabhai Vasava along with deceased Champaklal Diwangi Padvi and several other persons was dancing in a marriage on 8th April, 1996 around 20:00 hours at village Adada in the marriage of son of Surpabhai Limbabhai Padvi. In the course of dance the two collied with each other resulting into altercation and quarrel. The two were separated by the other participants and relatives. The appellant is alleged to have shown his determination to do away with the deceased while he left the venue. It is the prosecution case that the appellant arrived at the venue at about 22:30 hours with a knife in his hand and inflicted a knife blow in chest of the deceased resulting into the death of the deceased. The injury has resulted into rupture of heart, lungs besides fracture of sternum and the deceased died of hemorrhagic shock due to the injury caused to him. The first informant who was present at the place of incident raised shouts. The appellant is alleged to have escaped from the place of incident. Thereafter, the deceased was taken in a tractor to Velda Government dispensary, but he succumbed to the injury on the way. The first informant went to Nizar Police Station and lodged the F.I.R. Offence was registered and investigation started. The Investigating Officer having found sufficient material against the

appellant, filed the charge sheet against him in the Court of J.M.F.C., Nisar, who in turn committed the case to the Court of Sessions as the offence was triable exclusively by the Court of Sessions and Sessions Case No.242/96 came to be registered.

2.2. Charge against the appellant was framed at Exh.6 for offences punishable u/s 302 and 201 of I.P.C. The appellant pleaded not guilty to the charge and claimed to be tried. The Trial Court, after considering the evidence led by the prosecution, came to the conclusion that the prosecution was successful in establishing the charges against the appellant and, ultimately, recorded conviction, as stated above. It is against this judgment and order that the present appeal is preferred.

3. Learned advocate Mr.Buddhbhatti appears for the appellant and learned APP Mr.K.P.Raval appears for the State.

4. Learned advocate Mr. Buddhbhatti submitted that here is the case where the appellant is convicted erroneously for the offence of murder. According to him there is evidence that before the incident there was a quarrel between the deceased and the appellant. The appellant gave only one knife blow which has, unfortunately, resulted into the death of the deceased and, therefore, the appellant could not have been convicted for the offence of murder. His case would, therefore, fall under the definition of culpable homicide not amounting to murder. Mr.Buddhbhatti submitted that the Trial Court has overlooked this aspect. Mr.Buddhbhatti also submitted that so far as conviction u/s. 201 of I.P.C. is concerned, there is no evidence against the appellant that he tried to destroy the evidence. The contents of

discovery panchnama could not have been taken into consideration by the Trial Court being incriminating to the appellant and, therefore, Mr.Buddhbhatti submitted that the appellant could not have been convicted for the offence punishable u/s. 201 of I.P.C. Mr.Buddhbhatti submitted that the evidence of eyewitnesses and that of the first informant are inconsistent with each other. The evidence of the first informant is inconsistent with the F.I.R. and, therefore, also conviction could have been recorded by the Trial Court. Mr.Buddhbhatti, therefore, submitted that the appeal may be allowed and conviction may be set aside or, in the alternative, the conviction may be altered from one under section 302 to one u/s. 304 of I.P.C.

5. Learned APP Mr.Raval has opposed this appeal. According to him there is no inconsistency or contradiction between the deposition of the first informant and the F.I.R. or between the deposition of the first informant and that of other eyewitnesses. He also submitted that the evidence clearly indicates that at the time of occurrence there was no circumstance which would attract any of the exceptions to section 300 of I.P.C. There was no quarrel, there was no altercation; and there was no circumstance which would result into the appellant loosing self-control. In fact, at the time of the incident, the appellant came to the spot and straightaway inflicted a knife blow. Mr.Raval submitted that this incident had its roots in an earlier incident that had occurred two hours prior thereto. After the first incident, the appellant had left the place and came back with a knife which can be considered as a deadly weapon considering its

size. The appellant inflicted a blow on vital part of the body resulting into rupture of lungs and heart. The sternum is also fractured. These factors would indicate the force with which the blow was given. Mr.Raval, therefore, submitted that the Trial Court was justified in recording conviction for murder. Mr.Raval submitted that, that part of panchnama which is incriminating may not be taken into consideration by the Court, but the circumstance would clearly indicate that the appellant tried to destroy evidence by cleaning the knife and, therefore, the Trial Court was justified in convicting the appellant u/s 201 of I.P.C. Mr. Raval therefore, submitted that the appeal may be dismissed.

6. We have examined the record and proceedings in light of the contentions raised by rival sides.

7. Dr.Surdas Rupchand is examined at Exh.9. He is the doctor who performed the post-mortem of the dead body of the deceased Champaklal Diwangi Padvi. He says that he noticed a penetrating incised wound (chest wound) in the middle of the chest at the level of 3rd intercostal space which was slightly oblique and the size is 2″x1″ with clear cut even and smooth edges. He also noticed fracture on sternum. The doctor says that he noticed corresponding internal injury on right ventricle. According to the doctor the injuries were sufficient in ordinary course of nature to cause death. He also states that the injury was caused with mudammal Article No.4- knife.

7.1. The first informant Gangaram Bajiya is examined at Exh.11. He says that the incident occurred about three years prior to his deposition, where his nephew Champaklal Diwangi Padvi was murdered. The incident occurred at about 10 p.m. when the function of dancing was going on. There was a quarrel between the appellant and the deceased and the appellant inflicted a knife blow in chest of the deceased. He says that he saw the actual occurrence from a distance of about 3 to 4 feet. He states that the deceased was taken to dispensary and while he was being taken to the dispensary, he succumbed to the injuries and, therefore, he went to the police and lodged the F.I.R. He says that Exh.12 is the F.I.R. given by him.

7.2. During cross-examination to the learned advocate for the defence, the witness states that in the course of dance, the feet of the deceased was crushed which resulted into an altercation and then a quarrel. During cross-examination he states that Tarsing Sursing, Ventaram, Pratapsing Ramjibhai, Bhimsing Surpa are known to him and they were present when the incident occurred. He also states that his brothers, Shivram, Devram and Jitendra were at their home. He states that he did not try to intervene out of apprehension. He denied the suggestion that he saw the deceased lying on floor for the first time.

7.3. Tarsing Sursing Padvi is examined at Exh. 19. He claims to be an eyewitness. He says that there was an altercation and a quarrel between the deceased and the appellant when the dance was going

on. He says that the two were separated by Ventaram, Gangaram Bajiya and others besides the witness himself and, while leaving the place, the appellant threatened that he was not going to leave the deceased in any manner and, thereafter, at about 10:30 p.m., while the witness and Champaklal Diwangi Padvi etc. were standing, the appellant had come there and inflicted a knife blow in chest of deceased-Champaklal Diwangi Padvi. Shouts were raised. Gangaram Bajiya brought his tractor and took the deceased to the doctor but he succumbed to the injuries on the way.

7.4. The witness has been cross-examined at length. He states that, initially, there was no bleeding from the chest of the deceased. He states that when the incident occurred, the lights in the pandal were on. He states that his statement was recorded by the police on 9/4/1996 in the evening. His statement was recorded while he was alone. He admits that he did not disclose it to any one prior to making the statement before the police that he had witnessed the incident. He states that it was he who showed the place of incident to the police.

7.5. Vantaram is examined at Exh.20. His deposition is on the same lines as PW-4 Tarsing Sursing. During cross-examination also he has sticked to his version and no material emerges from his deposition which would render his deposition vulnerable.

7.6. Pratapsing Ramjibhai is examined at Exh.21.

His deposition is also on the same lines as Tarsing Sursing.

7.7. Bhimsing Surpa Padvi is examined at Exh.22. He also supports the prosecution case and deposes on the same lines as other eye witnesses.

7.8. Devrambhai Bajiya Exh.23 is a Panch witness in whose presence the appellant discovered the knife in question.

8. We have examined the above pieces of evidence. We find that the evidence of eyewitnesses Ventaram, Pratapsingh and Bhimsingh Surpa to be consistent. All of them state that there was a quarrel at about 8:30 p.m. while the deceased and the appellant were dancing, then they were separated and when the appellant was leaving the place, the appellant said that he would not leave the deceased in any manner. He also deposed that the appellant came back at about 10:30 p.m. i.e. after about two hours and inflicted the knife blow.

8.1. It is true that first informant Tarsingh Sursing does not speak of the internal quarrel at 8:30 p.m. but he does speak of quarrel and then the knife blow being given by the appellant to the deceased. His F.I.R. speaks about the incident at about 8:30 p.m. and then the actual occurrence at 10:30 p.m. and, therefore, there is slight inconsistency between deposition of Tarsing Sursing and his F.I.R. and the depositions of other witnesses. In our opinion, this mistake may have

occurred because of efflux of time (three years) between the incident and the recording of deposition. We cannot overlook the fact that the First informant is a rustic villager engaged in a labour work. His deposition is consistent so far as his infliction of injury is concerned without any quarrel or altercation. The only inconsistency is that he does not speak of the earlier incident having taken place at 8:30 p.m. but he does say that the appellant came and inflicted the knife blow straightaway and, therefore, this inconsistency is not such as would wipe out the deposition of other eyewitnesses to the effect that, at the time of the incident, there was no quarrel or altercation between the two.

9. The outcome, therefore, is that there was quarrel between the appellant and the deceased two hours prior to the incident whereafter the appellant left the place saying that he was not going to leave the deceased. He came back to the spot after two hours with a knife in his hand and straightaway inflicted the blow on vital part of the body namely chest. The size of the knife is also of importance. It is a knife of the size of about 13 inches. The blow is given with a force which resulted into fracture of sternum and went deep into the chest penetrating right ventricle of the heart. This is done by him without any provocation offered to him. Knowledge and intention can very well be read from his conduct. The injuries were found by the doctor to be sufficient in ordinary course of nature to cause death and, therefore, there is no room for taking a different view in the matter than to confirm

the conviction of the appellant for offence of murder.

9.1. So far as conviction u/s 201 of I.P.C. is concerned, we have to agree with learned advocate Shri Buddhbhatti that the incriminating part forming part of panchnama cannot be looked into but the fact that the knife was discovered by the appellant is established through deposition of panch witnesses. That knife has been identified by the eye witness as the knife which was used by the appellant in commission of the crime. That knife therefore, should necessarily contain blood stains which were not found at the time of discovery. There is evidence that the appellant left the place after the incident with the knife. Necessarily, therefore, the inference is that the blood stains on the knife disappeared between the time when the appellant left the place of the incident and time when it was discovered by the police and this disappearance of blood stains can certainly be attributed to the appellant and, therefore, the appellant is rightly convicted for offence punishable u/s. 201 of I.P.C.

10. The contention that the case would fall under the definition of culpable homicide not amounting to murder cannot be accepted in light of the above discussion to the effect that the appellant has inflicted knife blow without any provocation being offered to him. There is no evidence to show that his case would attract any of the exceptions to section 300 of I.P.C. and under the circumstances, we cannot accept the contention.

11. In view of the aforesaid discussions, the appeal does not merit acceptance. The appeal is dismissed. The judgment and order of conviction and sentence rendered by learned Additional Sessions Judge, Surat, Camp at Vyara, in Sessions Case No. 242/96 stands confirmed.

(A.L.Dave, J.)

(Bankim N.Mehta, J.)

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